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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,901	09/18/2003	Mark H. Nicholls	12724.0 (Nicholls et al.)	8516
1342	7590	09/27/2005	EXAMINER	
PHILLIPS LYTLE LLP INTELLECTUAL PROPERTY GROUP 3400 HSBC CENTER BUFFALO, NY 14203-3509			MILLER, DANIEL H	
			ART UNIT	PAPER NUMBER
			1775	

DATE MAILED: 09/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/666,901

Applicant(s)

NICHOLLS ET AL.

Examiner

Daniel Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 9, and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Buck et al (U.S. 6818274 B1).

Buck teaches artificial turf comprising a primary backing having a first side and a second side and comprising a first backing a layer, a second backing layer, a third backing layer, and a fourth backing layer; a plurality of fibers sewn through said primary backing; and a secondary backing on said second side of said primary backing, wherein said first layer facilitates tufting, (see figure 1-8 see column 4 line 35-45) said second layer inherently facilitates dimensional stability, said third layer inherently facilitates tuft bind and said fourth layer inherently by its presence facilitates seam strength (figure 1). The artificial turf's fibers forming upstanding ribbons on said first side of said primary backing and further comprising an infill layer disposed between said ribbons providing additional weight and support (column 5 line 1-4). The artificial turf fibers form a plurality of rows and columns of ribbons, the distance between each said rows being substantially the same as the distance between each of said columns.

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Regarding claim 9, the artificial turf having said first or third layer comprises a polypropylene weave (See figure 1 and column 10 lines 20-25 background in line 10-50 and the interchangeability of layers is disclosed in column 10 line 52-60)).

Regarding claim 5, the secondary backing is a liquid applied urethane backing (column 4 line 52-57).

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Higgins et al (2003/0175474A1).

Higgins discloses a four layers primary backing and a secondary backing with tufts pulled through the primary backing (figure 1).

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Avery (U.S. 4,426,415).

Avery teaches a primary and secondary backing, the primary backing having up to four layers with tufted fibers pulled through it. (figure 5, column 1 line 35-45, column 3 line 25-40)

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buck as applied to claim 1 above, and further in view of Tomarian (U.S. 4,336,286).

Buck teaches all the elements of claim 1 as above, but is silent about the spacing between the tufts.

Tomarian teaches a grouping of tufts spaced an eighth of an inch on one side of a (column) and roughly a quarter of an inch on the opposite side (row) (Column 3 line 45-60). This is done to form a dense network (column 3 line 55-60). The examiner is interpreting this to be both substantially the same and about 3/8 inches.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to substitute the tufts of Tomarian with the artificial turf of Buck because it would form a dense network that would be more supportive for sports surface.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buck in view of Layman (U.S. 4,152,473).

Buck recites all the limitations of claim 1 but is silent as to seam tape covering a seam between panels.

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Layman teaches it is known in the art to use polypropylene tape (seam tape) to adhere seams or abutting edges of panels together in synthetic turf on the second side of primary backing. This technique increases dimensional stability (column 4 line 40-65). It also shows it is well known in the art to use turf as a modular system.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the tape used in Layman with the layers of Buck to increase dimensional stability.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buck as applied to claim 1 above, and further in view of Cheng et al (U.S. 5,939,166).

Buck recites all the limitations of claim 1, and further teaches a second or third layer that incorporates a polyester/nylon blend (column 10 line 20-40), but is silent as to a backing having a second layer with a polyester core and a nylon sheath.

Cheng teaches a polyester core with a nylon sheath used as a backing (Column 3 and 4 line 60-67, and 1-4). This is used because they are moisture stable strands (Column 3 line 40-45). Cheng also contemplating a multilayered backing (column 10 line 40 to 55).

Therefore, it is known in the art to use such backings and it would be obvious to a person of ordinary skill in the art at the time of the invention to use a composite layering of Buck and incorporate the polyester core and the nylon covering because they are moisture stable strands which would be better for outdoor applications.

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Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buck in view of Fink (U.S. 6,051,300).

Buck teaches all the elements of claim 1 but is silent as to the backing being tape warp and yarn fill.

Fink teaches a polypropylene tape warp and yarn fill known in the carpeting industry. The spun fibers are more desirable to increase adhesion of the layers (Column 1 line 40-60).

It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine Buck with the backing of Fink to increase adhesion.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Avery as applied to claim 1 above, and further in view of Tomarian (U.S. 4,336,286).

Avery teaches all the elements of claim 1 as above, but is silent about the spacing between the tufts.

Tomarian teaches a grouping of tufts spaced an eighth of an inch on one side (columns) and roughly a quarter of an inch on the opposite side (rows) (Column 3 line 45-60). This is done to form a dense network (column 3 line 55-60). The examiner is interpreting this to be both substantially the same and about 3/8 inches.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to substitute the tufts of Tomarian with the artificial turf of Avery because it would form a dense network that would be more supportive for sports surface.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Avery in view of Layman (U.S. 4,152,473).

Avery discussed above is silent as to seam tape covering a seam of a multi panel system.

Layman teaches it is known in the art to use polypropylene tape (seam tape) to adhere seams or abutting edges of panels together in synthetic turf on the second side of primary backing. This technique increases dimensional stability (column 4 line 40-65).

It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the tape used in Layman with the layers of Buck to increase dimensional stability.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Avery as applied to claim 1 above, and further in view of Cheng et al (U.S. 5,939,166).

Avery recites all the limitations of claim 1 but is silent as to a backing having a second layer with a polyester core and a nylon sheath.

Cheng teaches a polyester core with a nylon sheath used as a backing (Column 3 and 4 line 60-67, and 1-4). This is used because they are moisture stable strands (Column 3 line 40-45). Cheng also contemplating a multilayered backing (column 10 line 40 to 55).

Therefore, it is known in the art to use such backings and it would be obvious to a person of ordinary skill in the art at the time of the invention to use a composite

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layering of Buck and incorporate the polyester core and the nylon covering because they are moisture stable strands.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Avery in view of Fink (U.S. 6,051,300).

Avery teaches all the elements of claim 1 but is silent as to the backing being tape warp and yarn fill.

Fink teaches a polypropylene tape warp and yarn fill a known in the carpeting industry. The spun fibers are more desirable to increase adhesion of the layers (Column 1 line 40-60).

It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine Buck with the backing of Fink to increase adhesion.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Miller whose telephone number is (571) 272-1534. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on (571) 272-1535. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Daniel Miller



STEPHEN STEIN
PRIMARY EXAMINER